

Federal Communications Commission

DA 98-1509

Before the
Federal Communications Commission
Washington, D.C. 20554

In reply refer to:
818ed013 (King Broadcasters, Inc.)
818ed014 (KSRM, Inc.)

July 29, 1998

Released: July 30, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Sally Hoskins, President
King Broadcasters, Inc.
Licensee of Stations KSLD(AM)/KKIS-FM, Soldotna, AK
c/o Klondike City Complex
44619 Sterling Highway
Soldotna, AK 99669

Mr. Chester P. Coleman
c/o American Radio Brokers, Inc./SFO, Suite 625
1255 Post Street
San Francisco, CA 94109

Mr. John Davis, President
KSRM, Inc.
HC 2, Box 852
Milepost 16.5 K Beach Road
Soldotna, AK 99669

In re: Stations KSLD(AM)/KKIS-FM, Soldotna, AK
File Nos. BAL-940401EA/BALH-940401EB

Petition to Deny

Dear Applicants and Mr. Davis:

This is in reference to the applications for assignment of the licenses of stations KSLD(AM)/KKIS-FM,¹ Soldotna, Alaska, from King Broadcasters, Inc. ("King"),² to Chester P.

¹ Shortly after these application were filed, the call sign for the FM station was changed from KAZO(FM) to KKIS-FM. For convenience, we will refer to the station at all times by its present call sign of KKIS-FM.

Federal Communications Commission

Docket No. 02-21 PCT Exhibit No. # 2

Presented by PCT

Disposition { Identified 9/26/02
Received 9/26/02
Rejected _____

Reporter E. Thomas

Date 9/26/02

Coleman ("Coleman") (File Nos. BAL-940401EA/BALH-940401EB),³ the Petition to Deny filed May 13, 1994, by Peninsula Communications, Inc. ("Peninsula"), the licensee of KPEN-FM, Soldotna, Alaska, and the informal objection filed November 6, 1995, by William J. Glynn, Jr. ("Glynn").⁴ For the reasons set forth below, we deny Peninsula's Petition to Deny and Glynn's informal objection, and we grant the applications for assignment of the KSLD(AM) and KKIS-FM licenses from King to Coleman.

However, as set forth herein, it does appear that King engaged in an unauthorized transfer of control of stations KSLD(AM) and KKIS-FM to Coleman and to KSRM, Inc. ("KSRMI"),⁵ without prior Commission consent, in violation of Section 310 of the Communications Act of 1934, as amended (the "Communications Act"), and Section 73.3540 of the Commission's Rules. We have determined that the appropriate sanction for this violation is a monetary forfeiture, not denial of the assignment application. This letter, therefore, also constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURES against King Broadcasters, Inc., and against KSRM, Inc., pursuant to Section 503(b) of the Communications Act, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

The Pleadings. Peninsula alleged in its Petition to Deny that King transferred control of stations KSLD(AM) and KKIS-FM to Coleman prior to the time that the applications for consent to that transfer were filed with, and granted by, the Commission, in violation of Section 310(d) of the Communications Act. Peninsula pointed first to a "Program Services Agreement" ("PSA") dated February 16, 1994. The PSA is a time brokerage agreement pursuant to which Coleman provides programming for "substantially all the Stations' [KSLD(AM) and KKIS-FM] air time," including entertainment, commercials, news, and public service announcements. Coleman pays King \$2,600 per month for the right to program the stations, but those payments are to be credited against the purchase price for the stations. The PSA further provides that Coleman will "reimburse" King for all operating expenses of the stations, specifically including electrical power, liability insurance, and the salary for one full-time employee of King. The PSA also provides that Coleman will "acquire and install and during the term of this Agreement maintain, at [Coleman's] sole expense, all technical equipment necessary for the construction of the facilities of Station [KKIS-FM] in accordance with

² Sally Hoskins ("Hoskins") is King's President and 100% shareholder.

³ Although construction of new FM station KKIS-FM was completed shortly before the subject assignment application was filed, the application was assigned a file number prefix reflecting the stations unlicensed status ("BAPH"). The license for KKIS-FM was subsequently issued on July 28, 1995 (File No BLH-940329KA) and therefore we have changed the file number prefix to "BALH" to reflect the fact that KKIS-FM is now a licensed facility.

⁴ Also before the Commission are the following pleadings: (1) the Opposition to Petition to Deny filed June 20, 1994, by Coleman; (2) the Reply filed June 30, 1994, by Peninsula; (3) the Response to Reply filed July 29, 1994, by Peninsula; (4) the Comments of Peninsula filed November 3, 1995; (5) the Supplement to Comments of Peninsula filed January 11, 1996; (6) the Supplemental Response to Comments of Peninsula Communications, Inc., filed by King on February 20, 1996; (7) the Comments and the Statement for the Record of Peninsula Communications, Inc., filed July 1, 1996; (8) Coleman's Reply to Comments and Statement for the Record of Peninsula Communications, Inc., filed July 10, 1996; (9) a letter from counsel for KSRM, Inc., in response to Peninsula's Comments filed July 12, 1996; and (10) a letter from KSRM, Inc., dated July 30, 1996, providing additional information in response to an April 8, 1996, staff letter of inquiry.

⁵ KSRMI is the licensee of KSRM(AM), Soldotna, AK, and KWHQ-FM, Kenai, AK.

that station's construction permit" At the time the PSA was signed, KKIS-FM had not yet been constructed. Coleman subsequently constructed station KKIS-FM and placed it into operation. An FCC Form 302 license application to cover the KKIS-FM permit was filed on March 29, 1994 (File No. BLH-940329KA, granted July 28, 1995).

Peninsula further alleged that one of its officers, David Becker, visited the KSLD(AM)/KKIS-FM studios on May 10, 1994, asked to speak to the general manager of the stations, and was told by the KSLD(AM)/KKIS-FM receptionist that the General Manager of the stations was Chester Coleman, who was "out of state" at that time. According to Peninsula, this incident established that Coleman had also assumed the duties of General Manager of KSLD(AM)/KKIS-FM. Peninsula also supplied a Declaration from a former employee of King, Ron Holloway, who stated that he and another King employee, Dan Donovan, were called to a meeting at the station offices with Chester Coleman. At that meeting, Coleman handed both Holloway and Donovan "letters in which it was stated that Mrs. Hoskins had terminated our positions effective immediately and that we could pick up our paychecks on Friday. No further conversation end of meeting." According to Peninsula, this incident demonstrated that Coleman had the ultimate authority to fire employees, which is a responsibility incident to a general manager's duties.

Peninsula also alleged that the change of call sign for the newly constructed FM station from KAZO(FM) to KKIS-FM was a further indication of Coleman's improper control over KKIS-FM. According to Peninsula, the KKIS call sign was at the time assigned to an AM station in Concord, California, licensed to Concord Area Broadcasters, which is controlled and 50% owned by Chester Coleman. Coleman supplied King with a letter for submission with King's call sign change request authorizing King to request the use of the call sign KKIS-FM, concurrently reserving KKIS(AM) for continued use by the Concord station.⁶

Peninsula further alleged that upon prematurely assuming control of the stations, Coleman then engaged in a further transfer of control of the stations to John Davis, the owner of KSRMI, licensee of stations KSRM(AM), Soldotna, and KWHQ-FM, Kenai, Alaska. To support this allegation, Peninsula stated that when its officer, Mr. Becker, had asked to see the stations' general manager (as discussed above) and was told that Mr. Coleman was not in the area, the KSLD(AM)/KKIS-FM receptionist then directed Becker to John Davis, whom she allegedly identified as the "General Manager in Mr. Coleman's absence." Peninsula also stated that Coleman constructed the new KKIS-FM studios in the same office space as that housing the KSRM/KWHQ studios, and moved the KSLD(AM) studios there as well. Further, Becker's Declaration states that Davis told him that his company, KSRMI, had an "exclusive marketing agreement with Chester Coleman" that permitted KSRMI to jointly sell advertising for KSLD(AM)/KKIS-FM in conjunction with its sales efforts for KSRM(AM)/KWHQ-FM. Peninsula submitted sales promotional materials used for the joint sales of advertising by the KSRMI sales staff for the four stations.

Peninsula alleged that KSRMI's control over KSLD(AM), KKIS-FM, KSRM(AM), and KWHQ-FM involves four of the six stations in the market, in violation of the multiple ownership

⁶ The two stations shared the KKIS call sign (as "(AM)" and "-FM") until the call sign for KKIS(AM) was changed to KRHT(AM) on January 29, 1996.

rules governing markets with 14 or fewer stations.⁷ Peninsula claimed that because KSRMI could not own KSLD(AM)/KKIS-FM outright, KSRMI's owner, John Davis, "has apparently concocted a scheme wherein Coleman, a radio station broker, has contracted to purchase KSLD(AM) and KKIS-FM from Mrs. Hoskins, has entered into a time brokerage agreement with her over the stations while FCC approval is pending, and has turned control of the stations over to Davis to operate on his behalf." According to Peninsula, Hoskins is a willing participant in Davis's scheme because Hoskins is desperate to sell the stations, as is evidenced by similar allegations of a premature transfer control of KSLD(AM) in connection with a previous 1992 proposed sale to Cobb Communications, Inc.⁸

In his Opposition to the Petition to Deny, Coleman asserted that the PSA is a permissible time brokerage agreement which provides for the sale of a substantial block of time on the stations to Coleman in consideration for Coleman making a monthly payment to King "plus reimbursing [King] for its operating expenses and acquiring and installing the equipment that was needed to complete construction of KKIS-FM." According to Coleman, the PSA comports with time brokerage agreements that have been found by the Commission not to have resulted in a transfer of control of a radio station, citing Revision of Radio Rules and Policies, 7 FCC Rcd 6387, ¶ 66 (1992); Joseph A. Belisle, 5 FCC Rcd 7585 (MMB 1990); J. Dominic Monahan, 6 FCC Rcd 1867 (MMB 1990); and Peter D. O'Connell, 6 FCC Rcd 1869 (MMB 1990). Coleman further asserted that the PSA commits King to retain "ultimate control over the Stations' facilities and operations, including, specifically control over the stations finances, personnel and programming and compliance with the Stations' obligations to operate in the public interest and to comply with the rules, regulations and policies of the FCC." The PSA also allows King to reserve up to eight hours per week "for the broadcast of regularly scheduled news, public affairs, and other programming produced and/or selected by Owner." The PSA further provides that King is obligated to broadcast programming over the stations which addresses the issues of public importance in the service areas, and that King "will use a substantial portion of the air time reserved to it under the Agreement to satisfy its public service

⁷ Prior to March 1996, when the rule was modified as a result of the Telecommunications Act of 1996, Section 73.3555(a)(1) of the Rules, 47 C.F.R. 73.3555(a)(1), provided that, "[i]n radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM combination, represent less than 50 percent of the stations in the market." In addition, Section 73.3555(a)(2) provided that where a person with an attributable interest in one station in a market engages in the time brokerage of more than 15 percent of the broadcast time per week of another station in the market, "that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a) and (e) of this section." As a result of the Telecommunications Act of 1996, Section 73.3555(a)(1) was modified by Commission action of March 7, 1996, to allow a single owner to have an attributable interest in up to five commercial radio stations in a market with 14 or fewer stations, provided no more than three are in the same service and the stations do not represent more than 50% of the total stations in the market. See Implementation of Section 202(a) and 202(b)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership), 11 FCC Rcd 12368 (1996).

⁸ Cobb had previously been proposed as an assignee of the stations by applications filed February 24, 1992 (File Nos. BAL-920224EH/BAPH-920224EI). The Mass Media Bureau sought additional information from King and Cobb regarding an alleged premature transfer of control of KSLD(AM) to Cobb. The parties submitted comprehensive responses to the letters of inquiry, but requested voluntary dismissal of the assignment of KSLD(AM) and KKIS-FM to Cobb. On July 9, 1993, the staff granted the request and dismissed the applications but did so "without prejudice to whatever further action, if any, the Commission deem[ed] appropriate [with respect to allegations of premature transfer of control.]" See Letter to Michael H. Bader, Esq. and Howard J. Barr, Esq. Reference 8910-MAG (Chief, Audio Services Division, July 9, 1993). We find here that Hoskins and King did not abandon control of KSLD and KKIS to Cobb in the period during which the assignment to Cobb was pending and the time brokerage agreement between Cobb and King was in place.

programming obligations."

With respect to the change in call sign for KKIS-FM station, Coleman admitted asking King to change it and making the call sign of his California station available to King, but he contended that there was no legal significance to this involvement. Coleman argued that call signs are promotional and marketing identifiers for radio stations, and that a time brokerage agreement typically gives the programmer the right to request changes in call signs for marketing purposes. With respect to Peninsula's allegation that Coleman was involved in the firing of King employees Ron Holloway and Dan Donovan, Coleman submitted new declarations from both Holloway and Donovan, as well as from Coleman and Sally Hoskins, all asserting that Ms. Hoskins was in fact present at the meeting at which Holloway and Donovan were fired, and that Hoskins herself handed them their termination letters (which were letters signed by Hoskins), not Coleman. Coleman also submitted a declaration from the stations' receptionist, who denied having identified either Coleman or John Davis as the general manager of KSLD(AM)/KKIS-FM.

As for the further allegation that Coleman, subsequent to assuming control from King, then turned over control of the stations to John Davis' KSRMI, Coleman admitted to having entered into an oral joint advertising sales agreement with KSRMI, enabling it to engage in joint sales of KSLD(AM)/KKIS-FM with KSRMI's KSRM(AM)/KWHQ-FM. Coleman insisted, however, that Davis and KSRMI have had no involvement in programming KSLD(AM) or KKIS-FM, or in any other aspect of KSLD(AM)/KKIS-FM's operations other than advertising sales pursuant to the joint sales agreement with Coleman. Citing Revision of Radio Rules, supra, 7 FCC Rcd 2755, ¶ 63, Coleman argued that joint venture arrangements that do not involve time brokerage or programming are permitted by the Commission without restriction.

In its Reply, Peninsula contended that King had tried to mislead the Commission that the KSLD(AM)/KKIS-FM "main" studios are located at Mrs. Hoskins's other non-broadcast business, Sam's Pawn Shop, when in fact the stations are operated completely from Davis's KSRM(AM)/KWHQ-FM studios several miles away, which Hoskins had advised the Commission in a March 2, 1994, letter were "auxiliary" studios for KSLD(AM)/KKIS-FM. Peninsula also alleged that KSLD(AM)'s only microwave studio-transmitter link was moved to the KSRM(AM) studios, and that therefore "Mrs. Hoskins has no ability to operate KSLD(AM) and KKIS-FM stations from Sam's Pawn Shop." In addition, Peninsula submitted a Declaration of Brent Elkington, the licensee of KZXX(AM), in neighboring Kenai, Alaska, in which Elkington stated that, "[i]t is generally known here in the Kenai-Soldotna radio market that Mr. John Davis controls and jointly sells KSRM(AM), KWHQ-FM, KSLD(AM) and KKIS-FM and that Mrs. Sally Blakely Hoskins has essentially abandoned her day-to-day control over the latter two stations to Mr. Davis." Elkington described a joint sales presentation he witnessed wherein Davis "made it clear that he would in the future be jointly selling advertising for KSRM-KWHQ-KSLD-KAZO (now KKIS)." Elkington also asserted that by listening to the station, he had "ascertained that Mr. Davis' employees produce and participate in the local programming broadcast over KSLD(AM) and KKIS-FM." Elkington stated in particular that all of the locally-produced public service and commercial announcements on KSLD(AM)/KKIS-FM feature Davis' employees, and that KSLD(AM)'s daily 7:00 pm to 11:00 pm live local programming, a talk show, was moderated by Pat Nichols, an employee of KSRMI.

Coleman's Response to Reply included a Declaration from Sally Hoskins attesting that the main studio for KSLD(AM)/KKIS-FM, located at Sam's Pawn Shop, has full program origination

equipment and means for both stations to broadcast directly from this location. Additionally, Coleman provided his own Declaration and one from Davis stating that the persons who produce and announce public service announcements and commercials for KSLD(AM)/KKIS-FM are employees of Coleman's production company, "Radio One." According to both Coleman and Davis, the only material produced or announced by persons employed by KSRMI are commercials which are sold in combination with KSRM(AM)/KWHQ-FM pursuant to the admitted joint sales agreement between Coleman and Davis. With respect to the employee of KSRMI who also hosted a daily program on KKIS-FM, Pat Nichols, Davis and Coleman claimed that Ms. Nichols at that time was concurrently employed by KSRMI and by Coleman's Radio One, and Coleman produced a copy of Radio One's payroll check for Nichols for the relevant time period. Further, Coleman attested that he had been much more involved in the programming produced for KSLD(AM)/KKIS-FM pursuant to the PSA than claimed by Peninsula, and he pointed to certain programming decisions he made and to frequent trips to Soldotna to supervise programming operations. Coleman further stated that he has a full-time employee on site who supervises Radio One's daily programming operations.

Peninsula's January 11, 1996, Supplement to Comments alleged that Sally Hoskins, the sole owner of King, had filed a voluntary petition for personal bankruptcy in U.S. Bankruptcy Court in Alaska on August 31, 1995, and had failed to list her ownership of King and the stations as assets. According to Peninsula, this alleged failure shows that Hoskins does not consider herself to be the owner or licensee of the stations. King's February 20, 1996, Supplemental Response to Comments contradicts this allegation, noting that Hoskins' ownership of King's stock was correctly listed in her bankruptcy filing, and that Peninsula looked on the wrong schedule. King contends that Hoskins's personal bankruptcy has no impact on the subject assignment applications.

The Commission also received an informal objection dated November 6, 1995, from William J. Glynn, Jr., of Kasilof, Alaska. Glynn alleged that announcements were recently aired on stations KKIS-FM, KSRM(AM), and KWHQ-FM, encouraging listeners to apply for a construction permit for a new FM allocation at Kasilof. According to Glynn, these announcements were aired by Davis in "an attempt to generate so many filings on the Kasilof allocation that the matter will be designated for hearing and tie up the proceeding for years." Glynn claims that this effort will limit competition by keeping a new station in an adjoining market off the air pending the outcome of the hearings.

Commission Inquiries and Inspections. After review of the Peninsula and Coleman pleadings, the Audio Services Division staff sought additional information as to whether there had been a premature or unauthorized transfer of control of Stations KSLD(AM) and KKIS-FM from King to Coleman and/or to Davis and KSRMI. The Division thus on May 8, 1995, sent letters of inquiry to King and Coleman. Responses to the Commission's letters of inquiry were filed by King on July 6, 1995, and by Coleman on July 13, 1995. In addition, inspections of both the main and auxiliary studios of KSLD(AM)/KKIS-FM were conducted by the Anchorage Field Office of the Commission's Compliance and Information Bureau ("CIB") on August 23, 1995.

The responses to the Commission's May 1995 letters of inquiry provided information regarding Coleman's and KSRMI's involvement in the operations of the stations starting in February of 1994. First, the responses to the letters of inquiry disclosed that Coleman had assigned his rights and obligations under the King/Coleman PSA to KSRMI, by a letter agreement dated April 27, 1995, effective May 1, 1995. Thus since that date, KSRMI has been directly acting as programming broker

for the stations. It was also noted that KSLD(AM) had gone silent under Commission authority in February 1995 and therefore KSRMI was not providing any programming to KSLD(AM), only to KKIS-FM.⁹ Coleman disclosed that he and KSRMI had entered into a reciprocal option agreement providing options to acquire each other's stations under certain conditions. In addition, the April 27, 1995, letter agreement provided that if KSRMI were to sell KSRM(AM) and KWHQ-FM to a third party as a combination, KSRMI would also have the right to compel Coleman to sell KKIS-FM to that same party in a single transaction, as long as the purchase price for KKIS-FM was at least \$500,000 (i.e., if the price is equal to or exceeds \$500,000, Coleman did not have the right to approve or disapprove the sale or the final sales price for KKIS-FM). In addition, if KKIS-FM is sold pursuant to the provision, the proceeds would be split by Coleman and KSRMI. Specifically, the first \$100,000 would go to Coleman (plus an amount not to exceed \$15,000 to pay for the equipment Coleman leased from KOLA, Inc.),¹⁰ and the remainder of the sale proceeds from KKIS-FM would be split equally by Coleman and KSRMI.¹¹ In addition, the letter agreement provided KSRMI itself an option to purchase KKIS-FM for \$100,000 plus the \$15,000 cost of the equipment leased from KOLA, Inc. Coleman was also granted an option to purchase KSRM(AM)/KWHQ-FM from KSRMI for \$1,400,000. The letter agreement also stated that as a condition to Coleman exercising this option, he "must repay, in cash, all sums that I have borrowed personally from John G. Davis, President of KSRM, Inc."

With respect to Coleman's involvement in the construction of KKIS-FM, Hoskins stated that she had retained an engineering consultant and had contracted to purchase equipment for the new FM facilities prior to entering into the PSA with Coleman. Hoskins produced a copy of her engineering construction contract, an equipment order, and an \$8,000 deposit check. Hoskins did not claim that this deposit paid for any equipment or that she did in fact pay any of the costs of constructing KKIS-FM. Hoskins did state, however, that KKIS-FM's transmitting equipment is installed on a tower she owns and inside her transmitter building. Coleman stated that he "supplied" KKIS-FM's used transmitter, stereo generator and exciter, audio processor, and miscellaneous cables, mounting items, and spare parts through a lease from a third party (KOLA, Inc.). The terms of the equipment lease were not specified, but Coleman claimed he made all the lease payments, made all the relevant arrangements, and was solely responsible for this obligation. In addition, Coleman claimed he purchased the FM station's 3-bay antenna, STL package, computer systems, meters, amplifiers, and most other studio and transmission equipment from Broadcast Supply Worldwide, Inc. ("BSW"). The total price of the purchased items was \$62,734.30, and Coleman's July 13, 1995, response to the

⁹ On July 12, 1995, pursuant to Section 73.3613(d) of the Rules, KSRMI filed with the Commission a copy of the PSA and the letter agreement whereby Coleman assigned his rights and obligations under the PSA. KSRMI's filing stated that although the PSA covers programming for both stations, KSLD(AM) was off the air, and "the parties have no present intention of resuming operation." However, Commission records indicate that KSLD(AM) returned to the air on November 6, 1996.

¹⁰ Coleman attached to his July 13, 1995, response to the letter of inquiry, an agreement with the Receiver for KOLA, Inc., agreeing to sell Coleman the equipment previously leased from KOLA, Inc., for \$6,000. Coleman purchased that equipment from the KOLA Receiver on April 4, 1995, by executing a two-year promissory note in that amount for the benefit of the Receiver.

¹¹ Thus assuming a sale price for KKIS-FM of \$500,000, Coleman would receive approximately \$307,500 and KSRMI would receive approximately \$192,500. Under this formula, the higher the sale price over \$500,000, the higher the percentage of the proceeds would be paid to KSRMI.

letter of inquiry asserted that he "ordered and paid for the equipment listed" as having been purchased from BSW. King does not pay Coleman anything for the use of this equipment by KKIS-FM.

As noted above, the PSA specified that Coleman would reimburse King for all expenses incurred in the operations of the stations. Although King continued to pay the cost of liability insurance for the stations (under a blanket policy covering Hoskins' other businesses as well), Coleman in fact paid all other costs of the stations' operations, including utilities, auxiliary and main studio rents, telephone service, and satellite program services. Coleman stated that he entered into an agreement directly with Satellite Music Network for the satellite programming format broadcast by KKIS-FM (the "Hot-AC" network), and that during the term of the PSA, Coleman also paid Satellite Music Network for the "Pure Gold" program network that had been carried on KSLD(AM) under an agreement that predated the PSA.

In addition, Coleman explained in his July 13, 1995, response to the Commission's letter of inquiry that during the time that he operated the stations pursuant to the PSA, he paid all the stations' expenses directly rather than reimbursing King for these expenses as called for in the PSA:

Although the Programming Agreement, as originally drafted, contemplated that Sally [Hoskins] would pay all of the Stations' bills and that I would then reimburse her for the Stations' expenses, the practice developed, as a matter of convenience for both of us, that Sally [Hoskins] would send me various bills for reimbursable expenses and I would issue a check to pay the bill.

Neither Coleman's nor King's July 1995 responses to the Commission's inquiry letters disclosed whether, after the PSA was assigned to KSRMI in April 1995, King continued to send station bills to the "programmer" (now KSRMI) for payment, or whether King then assumed direct responsibility for the payment of the stations' bills.

Coleman was also asked whether any of the persons he employed in his role as programmer under the PSA were also employees of KSRMI. As noted above, Coleman had previously stated that the host of the local live evening interview program on KSLD(AM), Pat Nichols, was concurrently employed part-time by KSRMI and part-time by Coleman. Coleman responded that his only two other employees, Kurt Haider and Chris Bartells, who were employed by Coleman as production managers for KSLD(AM)/KKIS-FM, also worked part-time for KSRMI at the same time they worked for Coleman.

The responses to the May 8, 1995, letters of inquiry also provided further information as to the program origination capabilities of the KSLD(AM)/KKIS-FM main studio and the public service programming activities undertaken on a regular basis by Hoskins. Hoskins stated that she serves as full-time general manager of King's stations, and that King has one additional employee working full-time at the stations' main studio, although it is clear that both Hoskins and the additional employee also spend an unspecified proportion of their time on Hoskins' other businesses. Although Hoskins was asked to specify the particular responsibilities of all personnel assigned to the main studio, Hoskins stated only that the additional employee, Loretta Smith, is present "to assist me on a fulltime basis." Hoskins asserted that she (Hoskins) maintains the KSLD(AM)/KKIS-FM public inspection file at King's "main" studio, and that she also maintains the quarterly issues/programs lists

and unspecified financial records for the stations.

The CIB inspection confirmed that the KSLD(AM)/KKIS-FM "main" studio at Sam's Pawn Shop was fully equipped for program origination, and that King actually had the full-time staffing at its main studio claimed in its Response. While reporting that the PSA relegated most programming aspects of KKIS-FM's operations to KSRMI and that most station operations were conducted from the "auxiliary studios" located at the KSRM(AM)/KWHQ-FM studios, the CIB inspectors did not find other direct evidence that control over the stations had shifted from King to either Coleman or Davis/KSRMI.

Upon review of the July 1995 responses from King and Coleman to the Commission's letters of inquiry, the staff determined that additional questions had arisen regarding the role of KSRMI in the operation of KSLD(AM) and KKIS-FM both during the period when Coleman acted as programmer under the PSA and during the subsequent period, beginning May 1, 1995, when KSRMI itself became the programmer as a result of Coleman's assignment of the PSA to KSRMI. Therefore, further letters of inquiry were sent to Coleman and to KSRMI on April 15, 1996, primarily seeking information regarding the roles of KSRMI and its owner, John Davis, in the construction of Station KKIS-FM in early 1994 and in the operations of KSLD(AM) and KKIS-FM both before and after the PSA was assumed by KSRMI. Coleman and KSRMI filed separate responses to the further letters of inquiry on May 13, 1996, and May 15, 1996, respectively.

With respect first to the construction of KKIS-FM, Coleman's earlier July 1995 response to the first letter of inquiry had stated that he had "ordered and paid for" certain equipment for the construction of KKIS-FM and the relocation of KSLD(AM) broadcast operations, including the FM antenna, the FM STL equipment, the Digilink computers and other transmission and studio equipment, from BSW, listed on an "Invoice History Inquiry" as costing \$62,734.30. Coleman had stated further that BSW's "Invoice History Inquiry" specified "KSRM - KSRM, Inc. John Davis, GM" as "Customer" because Coleman "had arranged to lease space from KSRM and because Mr. Davis was present in Alaska to receive the shipment on [Coleman's] behalf." The further letters of inquiry to Coleman and to KSRMI sought additional information as to whether Mr. Davis had any dealings with equipment supplier BSW in connection with the equipment listed on the Invoice History Inquiry. Coleman stated that while Mr. Davis "had no discussion with Broadcast Supply Worldwide about purchasing items for KSLD(AM) and KKIS-FM," Davis "did talk to Broadcast Supply Worldwide to coordinate air freight shipments of the antenna for KKIS-FM about credit, payments and extended payment plan." Davis also stated that he "talked to Bernice McCulloch, President of B.S.W. about credit and extended payment plans for the new equipment when advertising sales did not come even close to expectations." Coleman was also asked to supply copies of invoices, bills of sale, or other documents relating to the equipment purchased from BSW. In response, Coleman submitted both "Statement of Account" documents and invoices from BSW. The BSW Statements of Account listed "KSRM - KSRM INC." under the "For the Account of" heading. The invoices had separate headings for "Sold To," which listed "KSRM - KSRM, Inc." along with its postal box mailing address, and "Ship To," which listed "KSRM Mile 16 1/2 K-Beach Road" as the shipping location. The invoices also listed "KSRM" as the "Customer No."

The further letter of inquiry to Coleman asked specifically for proof of what entity actually paid BSW for the \$62,734.30 in equipment purchased from BSW. Coleman supplied his check

registers and one cancelled check representing three payments to BSW totalling \$15,309.66.¹² KSRMI was also specifically asked "whether [Davis] or KSRMI paid for any of the items which Mr. Coleman has identified [from the BSW Invoice History Inquiry] as relating to KKIS-FM or KSLD(AM), either by paying Broadcast Supply Worldwide Inc. directly or by reimbursing Coleman for any such equipment purchases, and if so; specify the amounts paid by KSRMI/Davis." KSRMI's complete answer to this question as set forth in its April 30, 1996, response to the letter of inquiry was "KSRM made *some payments* to Broadcast Supply Worldwide, Inc. (B.S.W.) for Mr. Coleman. No reimbursements were made to Mr. Coleman." (Emphasis added). KSRMI failed to specify the amounts it paid directly, but it must be assumed that KSRMI directly paid the balance of the \$62,734.30 total not paid by Coleman, *i.e.*, \$47,424.64.¹³

Davis asserted, however, that KSRMI's employees did not participate in constructing KKIS-FM and relocating KSLD(AM)'s studios to the KSRM(AM)/KWHQ-FM studio location. Rather, according to Davis, "Coleman had his own engineer do most of the work," with additional technicians and tower riggers hired and paid by Coleman. Davis asserted that his only participation in the construction was to deliver some of the KKIS-FM transmitter equipment to the tower site with his truck.

However, most of the funds used by Coleman to pay for the construction engineers were provided by KSRMI. In addition to the amounts paid directly by KSRMI in 1994 for equipment purchased to construct KKIS-FM and move KSLD(AM) to the newly constructed "auxiliary" studio in KSRMI's building, KSRMI provided Coleman with a total of \$63,349.26, in twelve loans ranging from \$2,000 to \$10,000 during the period from February 18, 1994, to July 15, 1994. According to Coleman, these loans were made for the following purposes:

All monies borrowed were used for KSLD(AM) & KKIS-FM. The monies borrowed were used along with my own funds to defray the costs of constructing KKIS-FM, to acquire equipment for and install auxiliary studios for KSLD(AM) and KKIS-FM-FM at the KSRM studio site, and to cover operating costs I did not keep records as to the specific purpose for which the borrowed funds were used.

¹² One of these three payments to BSW, represented by a check register notation of Check No. 1007 for \$8,000, also includes a notation of a deposit the same date for the same amount in the form of a "short term loan." As discussed below, that deposit was made from a corresponding loan on the same date to Coleman from KSRMI.

¹³ In a July 30, 1996, further response to the letter of inquiry, KSRMI provided additional information related to the question of direct payment to BSW by KSRMI. The further response from KSRMI's Davis states in its entirety on this point as follows:

With respect to question 7(b) of your letter, some of the invoice items listed on the "Broadcast Supply Worldwide History Inquiry," as well as other operating expenses, were paid directly by Mr. Coleman (and his company Radio One) out of revenues generated by his stations. When those revenues were insufficient and bills had to be paid, I made loans to him. These loans are detailed in Exhibit 5d to my April 30 letter to you. I am unable to determine the specific purpose of each amount which I loaned to Mr. Coleman. As indicated in my Exhibit 5d, I kept track of all loans to Mr. Coleman, and Mr. Coleman repaid these loans in full.

This response fails to shed any further light on the amounts which KSRMI admittedly paid directly to BSW on Coleman's behalf.

In response to the request in the further letters of inquiry that documents pertaining to these loans be provided to the Commission, Davis and Coleman produced three different promissory notes reflecting these loans. The first, dated April 1, 1994, in the amount of \$20,000, stated that the loan was to be repaid on the first anniversary of the closing of a sale of one of Coleman's other radio stations to a third party, with no deadline or other provision for repayment if that closing did not occur. The second promissory note, which does not bear a date of execution but was apparently signed during the second half of 1994, is for the consolidation of the twelve loans made from February 18 to July 15, 1994, totaling \$63,349.26, with a payment date of June 31, 1995. The third promissory note, which was included with Coleman's response but not with KSRMI's, was dated April 20, 1995. This third note states a principal amount of \$46,506 and that it is "for monies owed as a result of a debt confessed in a Confession of Judgment Before Action." This Note requires payment of principal and interest in full upon the closing of either of two other radio station deals involving Coleman or in three years from execution, whichever comes first, with no payments of principal or interest prior to the due date. According to Davis and Coleman, Coleman repaid these loans in full in a series of payments to KSRMI made from December 15, 1994, to July 21, 1995.

In addition, KSRMI, upon its assumption of Coleman's rights under the PSA on April 27, 1995, paid King certain amounts that were apparently then owed by Coleman to King under the PSA. In this regard, the further letter of inquiry asked KSRMI to provide a listing of all payments made by KSRMI to King. KSRMI's response, at Exhibit 1A, reported a payment by KSRMI to King on the day after the assignment of the PSA to KSRMI, April 28, 1995, in the amount of \$9,896, which is \$7,296 in excess of the May 1995 brokerage fee of \$2,600.¹⁴ In addition, on June 1, 1995, KSRMI paid King both the \$2,600 June PSA payment and an additional payment of \$2,199.97.¹⁵ It appears that these payments represent amounts that were previously due to King from Coleman under the PSA prior to the assignment to KSRMI.

In addition to paying King amounts previously due from Coleman, KSRMI, upon directly assuming the PSA on April 27, 1995, also forgave Coleman the amounts which were supposed to have been charged Coleman for rent for the "auxiliary" KSLD(AM)/KKIS-FM studios in KSRMI's building from the time that the stations' operations were moved there in March 1994 through April 1995. Coleman and KSRMI had an oral agreement that Coleman would be charged \$500 per month rent by KSRMI for the space taken by the KSLD(AM)/KKIS-FM auxiliary studios. According to Coleman, this rent was one of the costs to be paid to KSRMI from collected sales revenues to be paid after KSRMI's costs were recovered. Coleman stated further that "[t]he rent was not paid as the sales efforts never produced enough revenues to pay all the monthly bills." The letter agreement by which KSRMI assumed the PSA from Coleman stated that KSRMI assumed all of Coleman's accounts

¹⁴ As noted above, the PSA, at Section 1.3, called for a monthly payment from the "programmer" to King in the amount of \$2,600, in addition to the reimbursement of all operating expenses for the stations.

¹⁵ These payments are in addition to the direct payments by KSRMI of the KSLD(AM)/KKIS-FM electrical power bill to Homer Electric Association. With respect to the power bill payments, the information provided by KSRMI shows two May 1995 payments by KSRMI to Homer Electric on KSLD(AM)/KKIS-FM's behalf totalling \$3,000, with subsequent payments for the next three months averaging \$1,282 per month; thereafter, the electric payments averaged \$756 per month. Thus it appears that KSRMI may have been paying off a past balance with the power company for the period preceding KSRMI's assumption of the PSA from Coleman.

payable as of the assumption date, and this assumption included all the back rent. Thus the auxiliary studio rent was never paid by Coleman to KSRMI.

According to Coleman, the agreed terms of the oral joint sales agreement between Coleman and KSRMI provided that "[a]ll costs of producing programming pursuant to the PSA were to be paid from collected advertising revenue and any excess collected revenues over the costs of programming were to be split 50/50 by John Davis and [Coleman]." However, "no [p]rofits were paid to [Coleman] or John Davis while [Coleman] operated the PSA because throughout the period the revenues collected were less than what was needed to cover [Coleman's] costs of producing programming for broadcast on KSLD(AM)/KKIS-FM under the PSA." Coleman claims he made additional capital contributions to cover the shortfalls.¹⁶ While Coleman stated that he had no records of the amount of advertising sold on the stations during the time that he operated the PSA, Davis listed collected advertising revenues starting at \$3,233 for March 1994, rising to \$27,163 for the November 1994, then lowering to \$9,200 for April 1995, the last month that Coleman operated the PSA. The average KSLD(AM)/KKIS-FM monthly advertising revenues for these fourteen months was \$8,516.

The further letters of inquiry also asked Coleman and KSRMI about the effect of the assignment of the PSA to KSRMI on certain financial provisions. First, Section 1.3 of the PSA entered into between Coleman and King provided that each of the \$2,600 monthly payments to King was to be applied to reduce the purchase price for the stations.¹⁷ Coleman and KSRMI stated that after assignment of the PSA to KSRMI, all monthly brokerage payments made by KSRMI to King will continue to reduce the final purchase price for the stations from King to Coleman. Although Coleman received the benefit of KSRMI's payments reducing the purchase price of the stations (a reduction of \$39,000 for payments made by KSRMI from May 1995 through July 1996), Coleman has no obligation to repay these amounts to KSRMI.

KSRMI was also asked about Section 1.3(b)(iv) of the PSA, whereby part of the consideration to King for making program time available to Coleman as "programmer" was that King would be provided up to \$1,000 per month in advertising on KSLD(AM)/KKIS-FM or on KSRMI's stations KSRM(AM)/KWHQ-FM.¹⁸ Davis stated that from March 1, 1994, through April

¹⁶ As noted above, a portion of these claimed capital contributions were funded by the loans from KSRMI.

¹⁷ Coleman stated that the \$2,600 monthly payments were intended to cover King's monthly loan payments to the Small Business Administration.

¹⁸ Under Paragraph 1.3(b)(iv), part of the consideration to King for making program time available to Coleman as "Programmer" was that Coleman would:

- (iv) Make available to Owner for no charge One Thousand Dollars (\$1,000.00) per month worth of advertising time on the Stations and/or Stations KSRM(AM), Soldotna, Alaska, and KWHQ(FM), Kenai, Alaska, based on the prevailing rates charged to commercial advertisers for the classes and quantities of time used by Owner for a period of sixty months commencing March 1, 1994, provided that, to the extent that Owner does not make use of advertising time of the stated value in any month, Owner shall not have the right to carry forward such unused value to any subsequent month, and provided further that Programmer shall have the right to limit the amount of advertising on stations KSRM and KWHQ made available to Owner during any month which falls wholly or partly within 45 days of a primary election, or 60 days of a general election, even to the extent of providing Owner with no advertising in any such month, but if

30, 1995 (during the period prior to Coleman's assignment of the PSA to KSRMI), KSRMI's stations KSRM(AM) and KWHQ-FM carried approximately \$9,000 in advertising for King's other, non-radio businesses without payment from King or Coleman.

The May 8, 1995, letter of inquiry to King and the April 8, 1996, letter of inquiry to KSRMI also sought information regarding actual programming efforts undertaken by King during the operations under the PSA. King responded that it oversees public services announcements broadcast on the stations, but that the announcements themselves are recorded by the programmer's (Coleman and subsequently KSRMI) employees and inserted in the satellite delivered programming by automation computer. King also stated that a weekly 15-30 minute live interview public affairs program was broadcast "at our direction." KSRMI responded that during the period when it served as programmer under the PSA (May 1995 to the present), "King has been providing continuous public affairs programming on KKIS-FM." However, of the three regular public affairs programs listed by KSRMI, none is actually produced by King or its employees -- two are produced by unrelated third parties and one is produced by KSRMI employees.¹⁹ Although KSRMI also stated that King's President, Sally Hoskins, has also "phoned or faxed in news tips and information on civic activities that she wanted covered and has sent public service announcements for us on KKIS-FM and KSLD(AM) when it was on the air," the actual coverage and broadcasting of that information was produced by KSRMI employees.

KSRMI also was asked to provide information regarding the payment of KKIS-FM's operating expenses for the period beginning with KSRMI's assumption of the PSA on April 27, 1995. KSRMI stated in response that King pays for its own business telephone for the "main" studio located at King's other businesses' location (not for the "auxiliary" studio). King "usually" pays the station's power bill but is reimbursed by KSRMI for those payments. The process King follows in obtaining reimbursement for the station's power bill is to telephone John Davis and advise him orally of the amount King has paid. KSRMI then writes King a reimbursement check. In addition, "on occasion," KSRMI paid the power bill directly to avoid late charges. Insurance for the stations is also paid by King. Since becoming the programmer, KSRMI entered into two satellite programming agreements with ABC Radio Networks for KKIS-FM, for the "Hot AC" format for the daytime, and for "Z Rock" for the nighttime. The Hot AC agreement was executed by Tom Farrell, an employee of KSRMI, and the Z Rock agreement was executed by John Davis, President of KSRMI, in each case with the notation of KSRMI as "LMA Operator." King did not execute either agreement.

Programmer exercises this right, this Agreement will automatically be extended for that number of months which is equal to the number of months in which Programmer elected not to make available to Owner the full value of advertising on Stations KSRM and KWHQ specified in this subsection. The obligation to provide advertising time will survive any termination of this Agreement for reasons other than a material default by Owner under this Agreement or the Purchase Agreement.

At the time the PSA was executed by Coleman and King, KSRMI, as licensee of KSRM(AM)/KWHQ-FM, was not a party to the PSA. KSRMI assumed Coleman's role as "Programmer" over one year later, on April 27, 1995.

¹⁹ One of the programs, a monthly half-hour live interview program ("The Alliance Report") is produced by an independent radio producer and public relations company. The second program ("Crimestoppers") consists of two weekly one-minute programs produced by the local police department. According to KSRMI, the third program ("KKIS-FM-In Touch"), weekly local interview program, "is produced by KSRM, Inc. employees with interviews and subject matter approved by King Broadcasters, Inc."

KSRMI pays ABC directly for both program services.

Coleman and KSRMI were also asked about their involvement in the decision to take KSLD(AM) off the air in February 1995.²⁰ Coleman states that the decision to take KSLD(AM) off the air was made by him in consultation with John Davis, and that he told Hoskins of his decision:

I discussed the lack of interest in the sales staff of KSRM, Inc. to sell the KSLD(AM) oldies format with John Davis and we concluded that the joint sales agreement with respect to KSLD(AM) should be terminated. It did not make business sense for me to continue to program KSLD(AM) under the PSA in the absence of a joint sales arrangement. The KSLD(AM) decision was made by myself after discussions with John Davis about the sales problems. I told Sally that I wanted to reduce my losses without abandoning my plans to consummate the sale of KSLD(AM) and KKIS-FM after the F.C.C. approval of this long pending transfer.

Davis states that he had several discussions with Coleman regarding the decision to take KSLD(AM) off the air due to poor advertising sales. Although Davis does not acknowledge that he participated in any discussions with King on this subject, he does assert that "it was decided by Mr. Coleman and King Broadcasters, Inc . . . that station KSLD(AM) would go 'off the air.'"

Discussion. Petitions to deny and informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended, provide properly supported allegations of fact which, if true, would establish a substantial and material question of fact regarding whether grant of the application would be consistent with the public interest, convenience, and necessity. See WWOR-TV, Inc., 6 FCC Rcd 193, 197 n.10 (1990). Furthermore, in assessing the merits of such pleadings, the staff must use a two-step analysis under Section 309(d)(1) and (2) of the Communications Act. The first step is whether or not a prima facie case has been made. If so, we next consider whether or not there is a substantial and material question of fact to warrant inquiry. Thus, in assessing both the petition to deny and the informal objection, the primary issue is whether or not substantial and material questions of fact have been raised to warrant further action by the Commission.

Section 310(d) of the Communications Act states, in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

47 U.S.C. § 310(d). Section 73.3540(a) of the Commission's Rules states that "[p]rior consent of the

²⁰ Specifically, Coleman was asked the following: "State whether, to your knowledge, John Davis or any employee of KSRMI participated in any discussions with you or King regarding the decisions to take Station KSLD(AM) off the air or to keep KSLD(AM) off the air, and if so, set forth the substance of each of those discussion, the dates, the participants, and the nature of Davis's or other KSRMI employees' involvement in those discussions." KSRMI was asked the same question, directed to Davis' or KSRMI's employees' involvement in these decisions.

FCC must be obtained for a voluntary assignment or transfer of control."

There is no exact formula by which control of a broadcast station can be determined. In ascertaining whether a transfer of control has occurred, we traditionally look beyond the legal title to whether a new entity or individual has obtained the right to determine the basic operating policies of the station (i.e., to affect decisions concerning the personnel, programming or finances of the station). See WHDH, Inc., 17 FCC 2d 856 (1969), aff'd sub nom. Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, e.g., Southwest Texas Public Broadcasting Council, 85 FCC 2d 713, 715 (1981), such delegation cannot be wholesale. That is, those parties delegated to a task must be guided by policies set by the permittee or licensee. See David A. Davila, 6 FCC Rcd 2897, 2899 (1991). In several cases, the Commission has permitted the use of a time brokerage agreement where the broker is also the proposed assignee of the station, as long as the time brokerage agreement is consistent with the Commission's rules and guidelines, so that ultimate control remains with the licensee until the grant of the application and closing of the transaction. See, e.g., Roy R. Russo, 5 FCC Rcd 7586 (MMB 1990); Joseph A. Belisle, supra, 5 FCC Rcd 7585.

Transfer of Control from King to Coleman and KSRMI. After evaluating all the relevant facts here, we conclude that King apparently engaged in an unauthorized transfer of control of KSLD(AM) and KKIS-FM to Coleman and then to KSRMI, which began upon the execution and implementation of the PSA by King and Coleman in February 1994 and continues to the present. We find two facts particularly compelling. First, by Coleman's own admission, King was merely "told" of Coleman's business decision to take KSLD(AM) silent in February 1995. We view King's lack of involvement in this decision as definitive evidence that King has abdicated control over the station. Second, King has no ownership or control over KKIS-FM's equipment and has no right to utilize the essential broadcasting equipment in the absence of the PSA. Indeed, as discussed below, the evidence strongly indicates that Coleman and KSRMI have virtually complete control over KSLD(AM) and KKIS-FM's financial matters.

Station Finances. We note first that, contrary to Coleman's assertions, the express terms of the PSA are not completely consistent with radio time brokerage agreements that have been approved by the Commission. Additionally, while the PSA states that King is to retain ultimate control over programming and operations of the station, the parties in practice have gone beyond the terms of the PSA, especially in the area of financial relationships, in turning over control to the broker. These financial relationships are important factors to be considered in weighing whether there has been an unauthorized transfer of control of the stations. See Roy M. Speer, 11 FCC Rcd 18393, 18415-17 (1996).

First, the PSA at Paragraph 1.3 requires the "programmer" -- first Coleman and subsequently KSRMI -- to "reimburse" King for "all costs of operating the Stations," including electrical power, liability insurance,²¹ and the salary for a King management employee. In addition, once the PSA

²¹ While the parties suggest that King continued to pay for liability insurance notwithstanding this provision, this apparently was done because King's insurance coverage for the stations was included under a blanket insurance policy Hoskins held for her other businesses. No other station expenses were paid by King.

went into effect, virtually all programming and broadcast operations were originated from the KSLD(AM)/KKIS-FM "auxiliary" studios which Coleman and KSRMI constructed in KSRMI's building housing its KSRM(AM)/KWHQ-FM broadcast studios.²² King had no financial responsibility whatsoever for the construction, maintenance, and operation of those auxiliary studios throughout the term of the PSA, either while Coleman was the "programmer" or later while KSRMI was the "programmer." Although KSRMI suggests that while it was the programmer, King was responsible for its own business telephone, KSRMI is referring to the telephone for the "main" studio located at King's other businesses, not for the stations' main telephone located at the KSRM(AM)/KWHQ-FM studios. The only significant station expense for which King has been billed is for the transmitter electrical power, which has been either paid directly by Coleman or KSRMI or paid by King who was then reimbursed by KSRMI. Again, however, the electrical power for which King is preliminarily billed does not include the power for the stations' auxiliary studios, only for the transmitter and the fallow "main" studio.

Although reimbursement of all basic station operating expenses by a broker may not be improper in itself, direct payment of basic station expenses by the broker is a factor that has been considered by the Commission in determining whether an unauthorized transfer of control has taken place. See e.g., Roy M. Speer, *supra*, 11 FCC Rcd at 18416; WGPR Inc., 10 FCC Rcd 8140, 8145 (1995). Nor do the cases cited by Coleman sanction the direct payment of basic station expenses by the broker. For example, in J. Dominic Monahan, *supra*, 6 FCC Rcd 1867, cited by Coleman, the licensee continued to pay "all its own operational expenses" In Peter D. O'Connell, *supra*, 6 FCC Rcd 1869, also cited by Coleman, the licensee paid its own employees, and there was no suggestion in that decision that the broker assumed any operational expenses for the brokered station. In Joseph A. Belisle, *supra*, 5 FCC Rcd 7585, a set monthly amount was specified to "power costs," but no other operational costs of the brokered station were assumed by the broker.

In practice, moreover, Coleman and King did not bother with the detailed "reimbursement" procedures set forth in the PSA whereby King was to present monthly itemized statements of expenses paid by King and then be reimbursed by Coleman. Rather, for "convenience," Coleman paid all expenses directly, and if King received any bills from vendors, they were sent to Coleman for direct payment.

In addition and, as noted, of particular importance, pursuant to the PSA Coleman and KSRMI purchased or leased essentially all the studio and transmitting equipment that was necessary to place then unbuilt station KKIS-FM into operation, and King has no ownership or other rights in that equipment. While King submitted in response to the Commission's letter of inquiry a cancelled

²² It cannot be argued that the "auxiliary" studios were not the primary broadcast origination point for KSLD(AM)/KKIS-FM. Upon their construction, the KSLD(AM) studio transmitter link ("STL") was moved there, the KKIS-FM STL was installed there, and the KSLD(AM)/KKIS-FM "main" studios remained capable of program origination only by virtue of a remote pickup station. Moreover, as discussed below, the parties have not asserted that any significant amount of programming has ever been broadcast from the "main" studios after the construction of the "auxiliary" studios. While there is no longer a rule requiring that a minimum amount of programming be originated at the main studio of a broadcast station, it is certainly relevant in determining the locus of control in this case to recognize that the licensee's management-level employee and her assistant are virtually never present at the location from which all the stations' programming originates, and that the licensee has no physical or legal control over the stations' auxiliary studios from which all such programming is originated.

check for \$8,000 to an engineering consultant in partial payment for his assistance in obtaining equipment to construct KKIS-FM, this consulting agreement preceded the Coleman PSA, and Coleman (who claims he oversaw construction of the station) had no idea what services or equipment, if any, were provided for this consulting fee. Additionally, Hoskins did not claim that any equipment was actually purchased by King for KKIS-FM pursuant to this consulting agreement or otherwise. Without the transmitter, antenna, and other essential equipment owned or leased by Coleman, the station would not be capable of operation.

Coleman's and KSRMI's payment of all operational expenses and of the costs of constructing KKIS-FM and relocating KSLD(AM) go beyond the time brokerage arrangements permitted in the cases cited by Coleman. Indeed, the present case is indistinguishable from Salem Broadcasting, Inc., 6 FCC Rcd 4172 (MMB 1991), where the time broker's complete construction of the new station's facilities was determined to be a primary indicator that an unauthorized transfer of control had taken place. As in the present case, the broker in Salem had selected the program format for the new station. The Bureau in Salem also found to be significant as to the lack of financial control by the permittee the fact that the net amount received by the permittee from the broker monthly for the right to broker the station was very small (a net payment of \$20 monthly after deducting an equipment lease payment from the brokerage payment). In the present case, while the monthly brokerage payment is significantly higher than in Salem and there is no cost to King for "leasing" any equipment from Coleman (which certainly in itself does not suggest that King has retained control since King has no right to use the equipment if the time brokerage were terminated), the monthly payments to King are deducted from the total sales price of the stations.²³

We note that the permittee in Salem had similarly argued that the time brokerage agreement did not vary from the brokerage agreements discussed above, to which the Bureau responded as follows:

We reject your suggestion that the Salem/Hilber arrangement comports with the Bureau's recent time brokerage decisions. When a "broker" takes on the characteristics of a lessee by infusing capital into the station and becoming intimately involved in decisions as to the construction and/or operation of a station, it transcends the traditional function of a time broker -- the purchase and sale of air time In these cases,²⁴ and those decided subsequent,²⁵ there was no evidence that the broker had (or would) infuse the station with working capital, buy equipment for the station, choose a format, or otherwise participate in or finance construction of the station.

6 FCC Rcd at 4173. Similarly, in Roy M. Speer, supra, 11 FCC Rcd 18393, the Commission found that a permittee had engaged in an unauthorized transfer of control where employees of a non-voting minority stockholder had supervised the construction of the new television station, the non-voting

²³ As Coleman has reported, the purchase price has, as of May 1996, been reduced by over \$77,000 to reflect the deduction of monthly payments under the PSA.

²⁴ The Bureau was specifically referring to Russo, supra, 5 FCC Rcd 7586, and Belisle, supra, 5 FCC Rcd 7585.

²⁵ Citing Brian M. Madden, 6 FCC Rcd 1871(MMB 1991); Peter D. O'Connell, supra 6 FCC Rcd 1869 (MMB 1991); and J. Dominic Monahan, supra 6 FCC Rcd 1867.

stockholder had paid for the purchase of the station's equipment though loans to the permittee, and the permittee was not even aware of what equipment was being purchased for it or how much was being spent by the non-voting stockholder pursuant to these loans. In the present case, not only was the station constructed without any significant involvement by King, but King does not have any ownership or control over the station's physical facilities.²⁶

Station Programming and Personnel. The record does not unequivocally establish the same clear and overwhelming control over station programming and personnel by Coleman and KSRMI as it does with respect to station financing. It does, however, document a level of intrusion in these areas which, taken together with Coleman's and KSRMI's domination of station finances and King's passivity in the decision to take KSLD(AM) silent, supports our conclusion that an unauthorized transfer of control appears to have taken place.

As noted above, the PSA provided Coleman as programmer the right to program "substantially all" of both stations' air time, reserving to King up to eight hours per week between midnight and 6 am each day (and 7-9 am Sunday) for the broadcast of news, public affairs, and other programming produced and/or selected by King. However, neither King nor Coleman asserted that King has ever actually reserved any such time for these purposes. While Hoskins suggested in her response to the letter of inquiry that she "over see[s] the public service announcements and issues are selected for our public affairs programming," both she and Coleman stated that those public service announcements were actually recorded by Coleman's employees during the period when Coleman served as programmer under the PSA. In addition, a weekly 15 to 30 minute live public affairs program which Hoskins claimed was recorded from a local hotel "at our direction," also appears to have been produced and hosted by Coleman's employees. Similarly, when KSRMI became programmer after Coleman assigned the PSA to it on April 27, 1995, the public affairs programming on KKIS-FM was produced not by King but rather by KSRMI employees or by third parties.

KSLD(AM), until being taken off the air in February 1995, carried satellite-delivered network programming pursuant to a contract entered into originally by the prior time broker, Cobb Communications, and paid for by Coleman during the term of Coleman's PSA. From its inception, KKIS-FM has carried satellite-delivered programming pursuant to a contract entered into directly by Coleman with Satellite Music Network. As noted above, KSRMI subsequently entered into new satellite programming agreements for KKIS-FM after KSRMI became the programmer of the station.

While Hoskins claims that she monitors all programming from the "main" studio located at the site of her other businesses, all programming not delivered by

²⁶ In this respect, the present case differs significantly from Choctaw Broadcasting Corporation, 12 FCC Rcd 8534 (1997). In that case, although the time broker paid for the new station's equipment, the permittee leased that equipment from the time broker and thus had a right to use that equipment if the brokered programming was terminated. Moreover, if the assignment application in that case was not consummated, the permittee was obligated to purchase the station's equipment from the time broker, who was obligated to sell the equipment to the permittee. In addition, in Choctaw, the permittee maintained a higher degree of involvement in the construction and operation of the station than was evidenced by King in the present case.

satellite feed is originated from the auxiliary studios constructed by Coleman at the studios of Davis' KSRM(AM)/KWHQ-FM.²⁷

With respect to King's participation in the stations' personnel matters, Peninsula has alleged in its Petition to Deny that, subsequent to adoption of the PSA, Coleman fired King employees Ron Holloway and Dan Donovan. We are satisfied that while Coleman may have been present when those terminations were communicated to Holloway and Donovan, Hoskins was present as well, and it is uncontested that the termination letters themselves were signed by Hoskins, not Coleman. However, while Hoskins claimed in her response to the Commission's letter of inquiry that she "report[s] to work to the main studio as General Manager each day and Loretta Smith is here to assist me on a fulltime basis," she failed to respond to several specific questions in that letter of inquiry as to what her and her employee's specific duties were at the main studio, who paid the employee's salary, and what precise functions were performed at the main studios (Question 5 of the letter of inquiry to Hoskins). By contrast, the employees involved in programming aspects of the station were employed by Coleman or by KSRMI, and the employees involved in sales of advertising were employed by KSRMI, which, while Coleman was programmer, sold advertising for the stations pursuant to an oral joint sales agreement between Coleman and KSRMI. Due to Hoskins' failure to respond directly to the letter of inquiry regarding King's employees' responsibilities, we must conclude that those employees did not have any significant role in the stations' operations. In sum, no evidence that King retained control over the personnel employed by KSLD(AM)/KKIS-FM has been presented that is inconsistent with our conclusion that an unauthorized transfer of control appears to have taken place.

Conclusion Regarding Control. We have thus determined, based on the totality of circumstances in the present case, that King apparently abandoned control of stations KSLD(AM) and KKIS-FM starting on February 16, 1994, when the PSA with Coleman was executed. However, it appears that control of the stations at that point in time was not assumed by Coleman alone; rather, we conclude that the construction of KKIS-FM, the relocation of KSLD(AM), and the subsequent operation of both stations was a joint venture of Coleman and KSRMI, and that KSRMI's involvement in the operation of the stations during the time that Coleman served as "programmer"

²⁷ Peninsula also alleged that King attempted to mislead the Commission that the KSLD(AM)/KKIS-FM "main" studios are located at her place of business (Sam's Pawn Shop), rather than at what King claims are "auxiliary" studios at KSRM's studios, in order to mislead the Commission as to King's on-site supervision of the stations. The evidence, including the results of the CIB's on-site inspection, demonstrates that the facilities at the "main" studio are capable of conducting over-the-air broadcasting. While it does not appear that the main studio has actually been used by either KSLD(AM) or KKIS-FM since the PSA went into effect, there is no basis for concluding that the "main" studio is a sham, or that there has been a violation of the main studio rules by King.

In addition, notwithstanding Peninsula's contentions regarding the sharing of KKIS-FM's call sign with a station owned by Coleman in California, we do not believe that Coleman's involvement in the call sign change for KKIS-FM has substantial legal significance in determining control over the station. Furthermore, as noted *supra*, the call sign of Coleman's California station has since been changed. Peninsula also alleged, in its "Supplement to Comments" filed January 11, 1996, that King's abdication of control over the stations was further reflected in an bankruptcy filing made by Hoskins in August of 1995, wherein she allegedly failed to list Stations KSLD(AM)/KKIS-FM as assets. King's "Supplemental Response to Comments of Peninsula Communications, Inc.," received by the Commission on February 20, 1996, demonstrated that Peninsula's allegation was in error, and that Hoskins did list her interest in the stations as a personal asset in her bankruptcy filing.

under the PSA was not limited, as the parties suggest, to the sales of advertising pursuant to the joint sales agreement. Rather, KSRMI appears to have exercised control over the stations during this period preceding the assignment to it of the PSA to at least an equal degree as Coleman. In addition, because KSRMI already owned and controlled one AM and one FM station (KSRM(AM) and KWHQ-FM) in the relevant local market, its actions in serving as time broker (jointly with Coleman) of an additional AM station and an additional FM station during the period from March 1994 to February 1995 (when KSLD(AM) went silent) exceeded the maximum of three stations that a single entity could control and/or broker in a market this size under the multiple ownership rules in effect at the time.²⁸ See 47 C.F.R. § 73.3555(a)(1)(i) (1995) (amended 1996).

It is true, as Coleman and KSRMI maintain, that the Commission has deregulated joint sales arrangements that do not involve time brokerage or joint programming arrangements. See Revision of Radio Rules and Policies, supra, 7 FCC Rcd 2755, 2787. However, in this case, KSRMI's relationship to Coleman during the period from February 1994 to April 1995, when Coleman assigned the PSA to KSRMI, is not limited to a joint sales agreement. It was KSRMI, not Coleman, which directly paid the equipment supplier, BSW,²⁹ the bulk of the cost of constructing KKIS-FM and relocating KSLD(AM). In addition, KSRMI was not only listed as the delivery point for the equipment, it was also separately listed repeatedly by BSW as the "customer" and account holder for the equipment purchase. KSRMI's Davis did not merely coordinate deliveries from BSW for convenience, rather, he negotiated extended payment terms, which was critical to him because KSRMI paid the BSW equipment bills. What was paid by Coleman for equipment purchases was primarily loaned to him by KSRMI through less-thanarms-length loans that were documented well after the funds were advanced to Coleman, initially with open-ended repayment obligations that attached only when Coleman obtained cash from other enterprises, if at all. KSRMI loaned operational funds to Coleman as well, and did not collect the auxiliary studio rent that was supposedly being charged by KSRMI to Coleman for this purpose. In addition, Coleman's time brokerage employees were all part-time KSRMI employees.

²⁸ The letter of inquiry also asked KSRMI to respond to the allegation made by Peninsula that when Coleman formally assigned the PSA to KSRMI on April 27, 1995, it was then in violation of Section 73.3555(a)(1) because it owned or brokered three radio stations out of six stations in the relevant radio market (KSLD(AM) by then being off the air). KSRMI's response asserted that there are actually thirteen stations that intersect the 5 mV/m contour for AM or the 3.16 mV/m contour for FM of stations KSRM(AM), KWHQ-FM, and KKIS-FM. Peninsula had asserted that there were only six stations in the relevant market. To resolve this discrepancy, the staff subsequently undertook its own analysis of the relevant market, and has determined that there are thirteen stations in the market. Thus, the multiple ownership violation by KSRMI ended with KSLD(AM) being taken off the air in February 1995. We note that by the time that KSLD(AM) returned to the air in November 1996, Section 73.3555(a)(1) had been revised to reflect the increased levels of local radio ownership mandated by the Telecommunications Act of 1996. Therefore, at the time that KSLD(AM) returned to the air, KSRMI's ownership of an AM station and an FM station, coupled with its attributable interests in KSLD(AM) and KKIS-FM through the PSA -- for a total of four stations -- was permissible under Section 73.3555(a)(1). In this regard, in markets of 14 or fewer stations, an entity is permitted to have attributable ownership interests in up to five stations, no more than three of which are in one service, so long as the stations do not represent more than 50 percent of the total stations in the relevant local radio market. See supra note 7.

²⁹ Although Coleman apparently obtained a used transmitter and other items from the Trustee for KOLA, Inc., that equipment was purchased from the Trustee a year later for only \$6,000. Thus its value is much less significant than the equipment purchased by KSRMI from BSW.

We also find that certain of the other financial relationships between Coleman and KSRMI indicate that the time brokerage, and indeed the assumption of control of the stations from King, were essentially a joint venture between Coleman and KSRMI, whereby risk of loss or potential for profit was shared by KSRMI and Coleman. In this regard, we find it significant that as part of the original PSA terms between King and Coleman as programmer, entered into when KSRMI was ostensibly not a party to the PSA, King was promised and provided up to \$1,000 per month of free advertising on KSRMI's stations KSRM(AM) and KWHQ-FM. We also find it significant that under the oral joint sales agreement between Coleman and KSRMI, Coleman never received any of the proceeds of advertising sales made on KSLD(AM) and KKIS-FM, even when total sales exceeded \$27,000 in the month of November 1994. Rather, all advertising sales revenues were retained by KSRMI to pay KSRMI's selling costs. Conversely, in those months where advertising sales did not cover KSRMI's costs, Coleman had no obligation to KSRMI to make up for such shortfalls -- those risks of loss were assumed by KSRMI alone. In addition, the payments to King of \$2,600 per month under the PSA that were made by KSRMI *after* the assignment of the PSA to KSRMI (as well as those past due payments made by KSRMI to King on the day KSRMI took over the PSA) continued to reduce the purchase price for the stations to Coleman as provided in Paragraph 1.3 of the PSA, but Coleman is under no obligation to repay these amounts paid by KSRMI even though Coleman will receive the benefit of the substantially reduced purchase price. Further, although Coleman has contracted to purchase KSLD(AM)/KKIS-FM from King for \$330,000, Coleman has provided an option to KSRMI to purchase KKIS-FM for only \$100,000, and this price for KKIS-FM alone was set *after* Coleman and KSRMI had taken KSLD(AM) off the air, with only very minimal plans to return it to operation. This same option agreement authorizes KSRMI to sell KKIS-FM to a third party that wishes to purchase KSRMI's stations, without Coleman's approval, as long as the price for KKIS-FM is at least \$500,000. If that price for KKIS-FM is obtained, the first \$100,000 goes to Coleman, but the remainder of the purchase price is split equally by KSRMI and Coleman. These financial terms are indicative of a joint venture in the construction, operation, and acquisition of KKIS-FM and KSLD(AM).

As a final matter, we address the issue raised in the informal objection filed herein by William J. Glynn, Jr. As noted above, Glynn claims that Davis has repeatedly broadcast over KSRM(AM), KWHQ-FM, and KKIS-FM announcements encouraging listeners to file applications for a new FM allocation at nearby Kasilof, Alaska. Glynn alleges that these announcements represent an anti-competitive effort by Davis to generate multiple applications so that the allocation will be tied up in protracted hearings. Even assuming that the announcements described by Glynn were in fact broadcast,³⁰ we do not believe that Glynn has demonstrated that the broadcast of such announcements would raise a substantial and material question of fact that warrants further inquiry. While Glynn would have us presume an improper, anti-competitive motive behind encouraging numerous interested parties to apply for the open allocation, the Commission in other contexts has stated that the public interest is served by a choice among a number of qualified applicants. *See, e.g., Azalea Corp.*, 31 FCC 2d 561, 563 (1971). Moreover, there is no record evidence that Davis arranged or paid the expenses of any applicant for the Kasilof allotment or that there was any other violation of the Commission's rules or policies. For these reasons, Glynn's claims are speculative and do not demonstrate that the grant of the present application would not be in the public interest.

³⁰ Glynn's allegations are deficient because they are not supported by an affidavit setting forth precisely what was allegedly broadcast. This failure makes it nearly impossible to evaluate the legal significance of such alleged announcements.

As stated above, we have concluded that King apparently engaged in an unauthorized transfer of control of Stations KSLD(AM) and KKIS-FM to Coleman and KSRMI jointly, during the period starting on or about February 16, 1994, and continuing through April 26, 1995, and to KSRMI alone from April 27, 1995, to the present, in willful violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules. In addition, we find that KSRMI's brokerage of the stations during the period starting in March 1994, when KKIS-FM went into operation, until February 1995, when KSLD(AM) was taken off the air, resulted in KSRMI violating the local multiple ownership rule, 47 C.F.R. § 73.3555(a)(1)(i), because during that time KSRMI exercised control over four stations in a local radio market containing thirteen radio stations. A transfer of control violation could warrant revocation of King's, Coleman's and KSRMI's authorizations if the transfer and the accompanying multiple ownership rule violation were intentionally concealed from the Commission through misrepresentations or lack of candor. See, e.g., Roy M. Speer, supra, 11 FCC at 18428; Black Television Workshop of Los Angeles, Inc., 8 FCC Rcd 4192, 4198 (1993); Silver Star Communications-Albany, Inc., 6 FCC Rcd 6905, 6907 (1991). Here we find that there is no substantial and material question of fact that either King, Coleman, or KSRMI acted with an intent to deceive the Commission. Therefore, we shall not designate for revocation King's, Coleman's, or KSRMI's Commission authorizations. Nor do these apparent violations require the denial of the assignment of license application. Rather, we believe that monetary forfeitures against both King and KSRMI are the appropriate sanction.³¹

We have considered the factors set forth in 47 U.S.C. § 503(b) as well as Commission precedent concerning similar violations in order to determine the appropriate amount of the fine imposed.³² In Salem Broadcasting, Inc., supra, 6 FCC Rcd 4172, 4173, the licensee was fined \$10,000 for an unauthorized transfer of control and a main studio rule violation that existed for a period of approximately ten months.³³ Salem, like the present case, involved a brokerage/programming agreement that, as effectuated, was determined to constitute an unauthorized transfer of control. In Roy M. Speer, supra, 11 FCC Rcd 18393, the permittee was

³¹ License renewal applications for KSLD(AM) and KKIS-FM were granted on January 28, 1998. Coleman's participation in the unauthorized assumption of control of the stations concluded in April 1995. The provisions of 47 U.S.C. § 503(b)(6), which sets forth statutory limitation periods under which forfeitures may be assessed, therefore preclude us from issuing a forfeiture to Coleman. For the same reason, we have not taken into account the multiple ownership violations in determining the forfeiture assessed against KSRMI, because the violation occurred outside the period for which a forfeiture may be assessed.

³² In United States Telephone Ass'n v. FCC, 28 F.3d 1232 (D.C. Cir. 1994), the United States Court of Appeals for the District of Columbia Circuit vacated the *Policy Statement, Standard for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. denied*, 7 FCC Rcd 5330 (1992), *revised*, 8 FCC Rcd 6215 (1993). In accordance with the court's decision, and after notice and public comment, the Commission adopted *Forfeiture Guidelines*, 12 FCC Rcd 17087, which became effective October 14, 1997. The apparent violations of Section 310(d) of the Act and of Section 73.3540(a) of the Commission's rules here were continuing in nature, but commenced prior to the effective date of the new guidelines. With respect to apparent violations occurring before the effective date of the new guidelines, the Commission has determined to consider the criteria developed under Section 503 and applied by the Commission in previous cases, and we have done so here. 12 FCC Rcd at 17108-09.

³³ The Salem Broadcasting, Inc., decision does not clearly delineate what portion of this forfeiture was assessed for the unauthorized transfer of control, and what portion was assessed for the main studio rule violation.

assessed a forfeiture of \$25,000 for its participation in the unauthorized transfer of control that was limited to the construction phase, and the non-voting stockholder that was found to engaged in the unauthorized transfer which also resulted in the violation of the duopoly rule was assessed a forfeiture of \$150,000. In Silver Star Communications-Albany, 6 FCC Rcd 6905 (1991), the licensee of an AM/FM combination was fined \$20,000 for an unauthorized transfer of control of the two stations over a period of 18 months. In First Broadcasting Corp., 3 FCC Rcd 2758 (1988), the licensee of an AM station was fined \$20,000 for an unauthorized transfer of control effectuated through unreported stock transactions. Although the licensee filed an assignment application two years after the stock transactions took place seeking nunc pro tunc approval of the transfer, the \$20,000 forfeiture was assessed for the full six-year period that the unauthorized transfer continued. In Cate Communications Corp., 60 RR 2d 1386 (1986), a forfeiture of \$20,000 was affirmed by the Commission for the unauthorized transfer of control of an AM station for a period of 13 months.

In view of the above, pursuant to Section 503(b) of the Communications Act, King Broadcasters, Inc. and KSRM, Inc. are hereby advised of its apparent liability for a forfeiture of Ten Thousand Dollars (\$10,000.00) each for the willful and repeated violation of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules. In regard to this forfeiture, King and KSRMI are each afforded a period of thirty (30) days from the date of this Notice to show, in writing, why a forfeiture penalty should not be imposed or pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent. 47 C.F.R § 1.80(f)(3). Other relevant provisions of Section 1.80 are summarized in the attachment to this Notice.

In light of the above, we find that there are no substantial and material questions of fact that warrant further inquiry in a hearing. Accordingly, the Petition to Deny the application to assign the licenses of stations KSLD(AM) and KKIS-FM, Soldotna, Alaska, from King Broadcasters, Inc., to Chester P. Coleman (File Nos. BAL-940401EA and BALH-940401EB), filed May 13, 1994, by Peninsula Communications, Inc., is DENIED. In addition, the informal objection filed by William J. Glynn, Jr., IS DENIED. Having found that King and Coleman are qualified to assign and purchase stations KSLD(AM) and KKIS-FM and that the sale would further the public interest, convenience and necessity, the applications ARE GRANTED. However, to the extent that Coleman intends to continue the PSA with KSRMI upon consummation of the assignment application, we caution Coleman to take all necessary steps to ensure compliance with the Commission's policies concerning the implementation of agreements in which a broker/licensee supplies programming to a station. The Commission has repeatedly emphasized that the licensee must retain ultimate control of a station subject to such an agreement, including a time brokerage agreement or other similar arrangement, and must adhere to the Communications Act, the Commission's rules and policies and the antitrust laws. See, e.g., Gisela Huberman, 6 FCC Rcd 5397 (MMB 1991); Brian M. Madden, 6 FCC Rcd 1871 (MMB 1991); Peter D. O'Connell, 6 FCC Rcd 1867 (MMB 1991); J. Dominic Monahan, 6 FCC Rcd

1867 (MMB 1991); Roy R. Russo, 5 FCC Rcd 7586 (MMB 1990); Joseph A. Belisle, 5 FCC Rcd 7585 (MMB 1990).

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COMMUNICATIONS

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